IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14840 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Versus

MENABEN JAYANTILAL KUMBHAR

Appearance:

1. Special Civil Application No. 14840 of 2003

NANAVATI & NANAVATI for Petitioner No. 1

MR GK RATHOD for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 22/07/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the order dated 21/01/03 at Annexure 'A' to the petition passed by

the Labour Court, Ahmedabad, in Miscellaneous Application No.251 of 1999 in Reference (LCA) No.1331 of 1991, whereby Reference (LCA) No.1331 of 1991 which was dismissed for default on 04/04/95 was ordered to be restored.

2.0 Workman - Jayantibhai Nanalal Kumbhar, husband of respondent no.1 and father of respondents no.2 & 3 herein, was working as a Conductor with the petitioner Corporation. The workman was found guilty in the departmental proceedings and was therefore dismissed from service w.e.f. 20/04/89. He raised industrial dispute which came to be registered as Reference (LCA) No.1331 of 1991 before the Labour Court, Ahmedabad. The said Reference was dismissed for default by the Labour Court by order dated 04/04/95. The said workman expired on 31/03/99.

2.1 After the death of the workman, the heirs and legal representatives of the deceased workman approached the Labour Court, Ahmedabad, by filing application being Misc.Application No. 251/1999 under the Industrial Disputes Act for restoration of the said reference along with a delay condonation application. The Labour Court condoned the delay and restored the application by order dated 21/01/03 at Annexure 'A' to the petition. Hence, this petition.

3.0 It is clear that under Rule 26-A of the Industrial Disputes (Gujarat) Rules, 1966 the concerned workman has to file application for restoration within a period of thirty days. In the present case, the legal heirs have approached the Labour Court, Ahmedbad, after a period of four years. The order was passed in April 1995 and the workman expired in March 1999.

3.1 From the averments made in the petition, it is clear that the order of the Labour Court dated 04/04/95 and the Notification of the Labour Commissioner dated 18/07/95, both were received by the deceased workman. Therefore, it is clear that the concerned party, namely the deceased workman, was not inclined to go for the revival of the reference. Therefore, the legal heirs ought not to have been entertained by the Labour Court by way of the Miscellaneous Civil Application.

4.0 It is clear that by reviving the reference which was published under the Rules in 1995 and the application which was time-barred, the Labour Court has revived a 'dead horse'. In my view, the decision taken by the Labour Court is erroneous and is required to be quashed

and set aside. However, the petitioner Corporation, being a public body, will consider the case of the deceased workman sympathetically and will pay all the retirement dues, as if the deceased workman had been 'relieved' from the service and not 'dismissed' from the service.

5.0 For the foregoing reasons, the petition is partly allowed. The petitioner Corporation will pay all the retirement benefits to the legal heirs of the deceased workman on the assumption that he was 'relieved' from the service rather than being 'dismissed' from the service. The said benefits are directed to be paid to the heirs of the deceased workman within a period of three months from the date of receipt of this order. If the said retirement dues are not paid, then the legal heirs of the deceased employee shall make an application to that effect before the petitioner Corporation. If such an application is made then the same shall be decided within a period of four months thereafter. Rule is made absolute to the aforesaid extent with no orders as to costs.

(K. S. Jhaveri, J.)

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